

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL K. WEST,

Plaintiff,

v.

CAVALRY PORTFOLIO SERVICES,
LLC,

Defendant.

CASE NO. C13-244 RAJ

ORDER

This matter comes before the court on motions for protective order filed by plaintiff Michael West (Dkt. # 12) and defendant Cavalry Portfolio Services, LLC (Dkt. # 15).

The court has broad discretion to control discovery. *Avila v. Willits Envtl. Remediation Trust*, 633 F.3d 828, 833 (9th Cir. 2011). That discretion is guided by several principles. Most importantly, the scope of discovery is broad. A party must respond to any discovery request that is “reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). The court, however, must limit discovery where “the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive” or where its “burden or expense . . . outweighs its likely benefit, considering

1 the needs of the case, the amount in controversy, the parties' resources, the importance of
 2 the issues at stake in the action, and the importance of the discovery in resolving these
 3 issues." Fed. R. Civ. Proc. 26(b)(2)(C)(i) & (iii). A party may move the court for a
 4 protective order from "annoyance, embarrassment, oppression or undue burden or
 5 expense, including . . . forbidding the disclosure or discovery . . . [and] prescribing a
 6 discovery method other than one selected by the party seeking discovery." Fed. R. Civ.
 7 Proc. 26(c)(1)(A) & (C). "The court may, 'for good cause,' issue an order to protect a
 8 party or person from annoyance, embarrassment, oppression, or undue burden or
 9 expense[.]" Fed. R. Civ. Proc. 26(c)(1).

10 **A. Plaintiff's Motion**

11 Plaintiff seeks a protective order as to the location and manner of his deposition.
 12 "He does not want to take the time off from his new employment to travel to Seattle for a
 13 deposition." Dkt. # 12 (Mot.) at 2. Unfortunately for plaintiff, simply not wanting to
 14 take time off from employment does not establish the requisite good cause required for
 15 the court to enter a protective order. Nor has plaintiff demonstrated good cause by way
 16 of his declaration in which he generally states that "traveling to Western Washington
 17 would take me away from my new job. The deposition with travel could take up to three
 18 days and two overnight stays in Seattle." Dkt. # 14 & 25 (West Decl.) ¶ 4. Plaintiff has
 19 not provided the court with any details regarding whether travelling to Seattle from Couer
 20 d'Alene, Idaho would constitute an undue hardship. Nor has plaintiff provided the court
 21 with binding precedent for the proposition that a deposition should occur at some place
 22 other than opposing counsel's office, and the court is not persuaded by the 1938 and 1940
 23 district court cases from New York. Nor can plaintiff require defendants to take his
 24 deposition by video. Plaintiff chose to file suit in the Western District of Washington,
 25 and with that filing comes some amount of inconvenience and expense. Since plaintiff
 26 has not provided the court with sufficient information regarding his schedule, days off,
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1 costs that may be incurred, or any other information, the court finds that plaintiff has
2 failed to demonstrate good cause.

3 **B. Defendant's Motion**

4 Defendant seeks a protective order to prohibit plaintiff from taking the deposition
5 of Penny Shemtob, defendant's in-house litigation counsel. This District has applied
6 *Shelton v. American Motors Corp.*, 805 F.2d 1323 (8th Cir. 1986) in the context of
7 determining when attorney depositions should be allowed. *Rygg v. Hulbert*, Case No. 11-
8 1827JLR, 2013 WL 264762 (W.D. Wash. Jan. 23, 2013). To depose an opposing party's
9 attorney, a party must show that the information sought from the attorneys (1) cannot be
10 obtained through other means, (2) is relevant and not covered by privilege or the work-
11 product doctrine, and (3) is necessary in preparing their case. *Id.* at *1 (citing *Shelton*,
12 805 F.2d at 1327-28).

13 Plaintiff has not even attempted to meet this standard. *See* Dkt. # 20. Even if
14 plaintiff's counsel did not know that Ms. Shemtob was counsel until after the Notice of
15 Deposition was served (Dkt. # 20 ¶ 7), plaintiff has not provided any legal or factual basis
16 for pressing forward with the deposition and forcing defendant to file a motion for
17 protective order. Plaintiff should have withdrawn the notice of deposition to avoid
18 wasting the court's time.

19 Defendant has requested attorney's fees and costs pursuant to Rule 37(a)(5). Dkt.
20 # 15 (Mot.) at 6-7. Plaintiff has not responded to defendant's request for attorney's fees
21 and costs. The court finds that since plaintiff has not provided the court with any legal or
22 factual basis for pursuing the deposition of Ms. Shemtob, plaintiff's position was
23 frivolous. The court also finds that plaintiff's counsel, James Sturdevant, should be
24 responsible for the costs and fees incurred by defendant since he, and not plaintiff, is
25 responsible for providing the court with valid legal authority. However, defendant has
26 not submitted its time-sheets to allow the court to assess whether the fees and costs
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1 incurred are reasonable. Accordingly, the court ORDERS the parties to meet and confer
2 regarding the reasonableness of the fees and costs incurred by December 17, 2013. If the
3 parties agree with respect to the reasonableness of the fees and costs incurred, they shall
4 file a stipulated motion with supporting documentation to the court no later than
5 December 20, 2013. If the parties cannot agree with respect to the reasonableness of the
6 fees and costs incurred, defendant may file a motion for attorney's fees with supporting
7 documentation, no later than December 20, 2013. The court warns that if the court finds
8 that either party's position was unreasonable or frivolous during the meet and confer
9 process, it will award the fees and costs associated with the additional motion as well as
10 sanctions for presenting unnecessary motions or unwarranted oppositions pursuant to
11 Local Civil Rule 11(c).

12 **C. Conclusion**

13 For all the foregoing reasons, the court GRANTS defendant's motion for
14 protective order and DENIES plaintiff's motion for a protective order. The parties are to
15 work together to find a mutually agreeable date for plaintiff's deposition no later than
16 December 31, 2013. Since dispositive motions are currently due on December 17, 2013,
17 and defendant should have the benefit of plaintiff's deposition prior to any motions are
18 filed, the court finds good cause to extend the remaining deadlines on the case schedule.
19 The court STRIKES the trial date, and orders the clerk to enter an amended case schedule
20 with the remaining deadlines. Dispositive motions shall be filed no later than January 24,
21 2014, and trial shall be set for June 3, 2014.

22 Finally, the court notes that that it has an incredibly heavy motions calendar and
23 trial schedule. The court does not have time to waste on motions that should be resolved
24 without court intervention. If the parties present unnecessary motions or unwarranted
25 oppositions in future filings, the court will not hesitate to sanction the parties and/or
26 counsel pursuant to Local Civil Rule 11(c).

1 Dated this 13th day of December, 2013.

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5 The Honorable Richard A. Jones
6 United States District Judge
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